

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011050660

v.

ROCKLIN UNIFIED SCHOOL DISTRICT,

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ROCKLIN UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011030240

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING/DENYING  
MOTION TO SHIFT EXPENSES

On March 1, 2011, the Rocklin Unified School District (District) filed its Request for Due Process Hearing (District's complaint) naming Student. On May 16, 2011, during the scheduled due process hearing, Student's father (Father) provided the District and hearing Administrative Law Judge (ALJ) with a letter dated May 16, 2011. The hearing ALJ determined that the May 16, 2011 letter constituted a Request for Due Process Hearing (Student's complaint) on behalf of Student (Student). On May 23, 2011, the hearing ALJ issued an Order which deemed Student's complaint filed, consolidated both cases, and continued the due process hearing to July 12, 2011. On May 20, 2011, the District filed a Notice of Insufficiency on Student's complaint and on May 25, 2011, the Office of Administration (OAH) issued an order finding Student's Issues, one, three, four and five insufficient. OAH found Student's Issues two and six, to be sufficient as follows:

Issue Two asserts that the District failed to adequately meet his unique needs by not proposing a functional analysis assessment (FAA) and behavior intervention plan (BIP) when the District became aware that Student's behavior support plan was not working.

Issue Six asserts that the District denied Student a FAPE by having him remain in the school conference room during lunch when he had behavioral problems, which did not meet his unique behavioral needs and the District did not implement other behavioral strategies.

On May 27, 2011, Father faxed a four page letter to OAH marked *URGENT* which detailed a series of communications and events commencing between the District and him on May 18, 2011, and culminating on May 27, 2011. Though not prepared as a formal motion for Sanctions, the letter requests OAH to issue an order which: (1) requires the District to pay

Father the sum of \$625.00 in sanctions; (2) requires the District to reconvene the May 27, 2011 IEP meeting; (3) requires the District to exclude Student's mother (Mother) from participating in Student's IEP process, and rescind Mother's consent to the May 27, 2011 IEP; and requests that OAH enjoin the District from "pitting Father against Mother," as Father is Student's court-appointed custodian.

On June 2, 2011, the District filed a response to Student's May 27, 2011 letter and requests.

#### APPLICABLE LAW

In certain circumstances, an administrative law judge (ALJ) presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the successor to the California Special Education Hearing Office) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

The OAH has a limited jurisdiction over the parties. Under special education law, the parent of a disabled child has the right to present an administrative complaint with respect to

any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE). (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006); Ed. Code, § 56501, subd. (a)(1)-(4).)

## DISCUSSION

Here, Father's motion fails because the subject matter of Father's requests is the District's alleged conduct arising out of an IEP meeting held on May 27, 2011 to discuss the 2011 extended school year (ESY). The alleged events had no relationship with the issues raised in either complaint set for hearing on July 12, 2011. As indicated above, only the ALJ who is presiding over the matters may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) This means that the requested sanctions must be related to the conduct of the parties with regard to the hearing, not an unrelated IEP process.

Further, the OAH has a limited jurisdiction over the parties. The OAH does not have jurisdiction to independently award a parent costs for attending or not attending an IEP meeting. The OAH has no jurisdiction to require a District to conduct or reconvene an IEP which is not part of a ruling regarding an existing complaint. The OAH has no jurisdiction to determine who may attend an IEP meeting which is not subject to a current complaint, however an ALJ may require a party to provide legal documentation that he is the holder of educational rights in order to file a complaint or pursue legal remedies on behalf of Student.

While this ALJ is not ruling on or disputing Father's concerns as contained in his May 27, 2011 letter, very simply, the issues raised are not related to the existing complaints before OAH, and are not subject to OAH jurisdiction. As a result, it is unnecessary to make further determinations regarding bad faith of either party.

## ORDER

1. Father's motion for sanctions is denied.

Dated: June 07, 2011

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings